REMARKS/ARGUMENTS

Claims 1, 4, 5, 10-18, 42-62, 64, and 66 remain in this application. Claims 3, 6-8, and 27 have been withdrawn as a result of an earlier restriction requirement. In view of the examiner's earlier restriction requirement, applicant retains the right to present claims 3, 6-8, and 27 in a divisional application.

Applicant respectfully asserts, in light of the comments offered herein and the terminal disclaimer filed herewith, this application is in condition for allowance.

§ 103 Rejections

The Examiner has rejected claims 1, 4-5, 10-18, 42-48, 51-54, 57-62, 64, and 66 under 35 U.S.C. § 103(a) as being obvious over U.S. Publication No. 2002/0094544, Fang et al. (*Fang*) in view of U.S. Patent No. 5,922,594 (*Löfås*) in light of U.S. Publication No. 2002/0128227 (*Hildreth*).

The Examiner has also rejected claims 49, 50, 55, and 56 under 35 U.S.C. § 103(a) as being obvious over commonly owned and assigned U.S. Publication No. 2002/0094544, Fang et al. (*Fang*) in view of U.S. Patent No. 5,922,594 (*Löfås*) and in view of U.S. Patent Publication 2002/0168692 (*Cass*) in light of U.S. Publication No. 2002/0128227 (*Hildreth*).

With respect to the use of *Fang* in rejections under 35 U.S.C. § 103, Applicant respectfully asserts that this is improper. According to 35 U.S.C. § 103(c)(1), subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person. 35 U.S.C. § 103(c)(1). According to MPEP § 706.02(l)(2)(II), "Applications and references (whether patents, patent applications, patent application publications, etc.) will be considered by the examiner to be owned by, or subject to an obligation of assignment to the same person, at the time the invention was made, if the applicant(s) or an attorney or agent of record makes a statement to the effect that the application and the reference were, at the time the

invention was made, owned by, or subject to an obligation of assignment to, the same person."

Statement of Common Ownership

The currently examined application, U.S. Application No. 10/602,242, and *Fang*, at the time of the invention of U.S. Application No. 10/602,242, were both owned by Corning Incorporated.

Because *Fang* cannot properly be used in a rejection under 35 U.S.C. § 103, Applicant respectfully submits that the rejections of claims 1, 4-5, 10-18, 42-48, 51-54, 57-62, 64, and 66; and claims 49, 50, 55, and 56 under 35 U.S.C. § 103(a) must be withdrawn. Applicant respectfully requests notification to this effect.

Obviousness Double Patenting

Claims 1, 5, 42-48, 53, 54, 57, and 62 have been provisionally rejected on the ground of nonstatutory obviousness-type double patenting as allegedly being unpatentable over claims 54-70 of copending U.S. Publication No. 2002/0094544 (*Fang*). The rejection is respectfully traversed.

Applicant's Representative had previously filed a terminal disclaimer on October 30, 2009. The Examiner noted that certain requirements of 37 CFR 1.321(c)(3) were apparently not met by the executed terminal disclaimer. Although Applicant does concede the correctness of this assertion, Applicant's Representative has executed another terminal disclaimer which includes language different from the first terminal disclaimer in an effort to address the noted concerns.

Applicant's Representative provides herewith the above noted terminal disclaimer and the appropriate fee with respect to commonly owned and assigned U.S. Publication No. 2002/0094544 . Accordingly, the obviousness-type double patenting rejection is believed to be overcome and should be withdrawn.

Based upon the above amendments, remarks, and papers of records, applicant believes the pending claims of the above-captioned application are in allowable form and patentable over the prior art of record. Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Applicant believes that no extension of time is necessary to make this Reply timely. Should applicant be in error, applicant respectfully requests that the Office grant such time extension pursuant to 37 C.F.R. § 1.136(a) as necessary to make this Reply timely, and hereby authorizes the Office to charge any necessary fee or surcharge with respect to said time extension to the deposit account of the undersigned firm of attorneys, Deposit Account 03-3325.

Please direct any questions or comments to John L. Haack at (607) 974-3673.

Respectfully submitted,

DATE: April 19, 2010

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Susan M. Kane